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JOSEPH F. SPANIOLO,
CLERK

CASE NUMBER: 89-586

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

LORRAINE MALINAK,)

Petitioner,)

vs.)

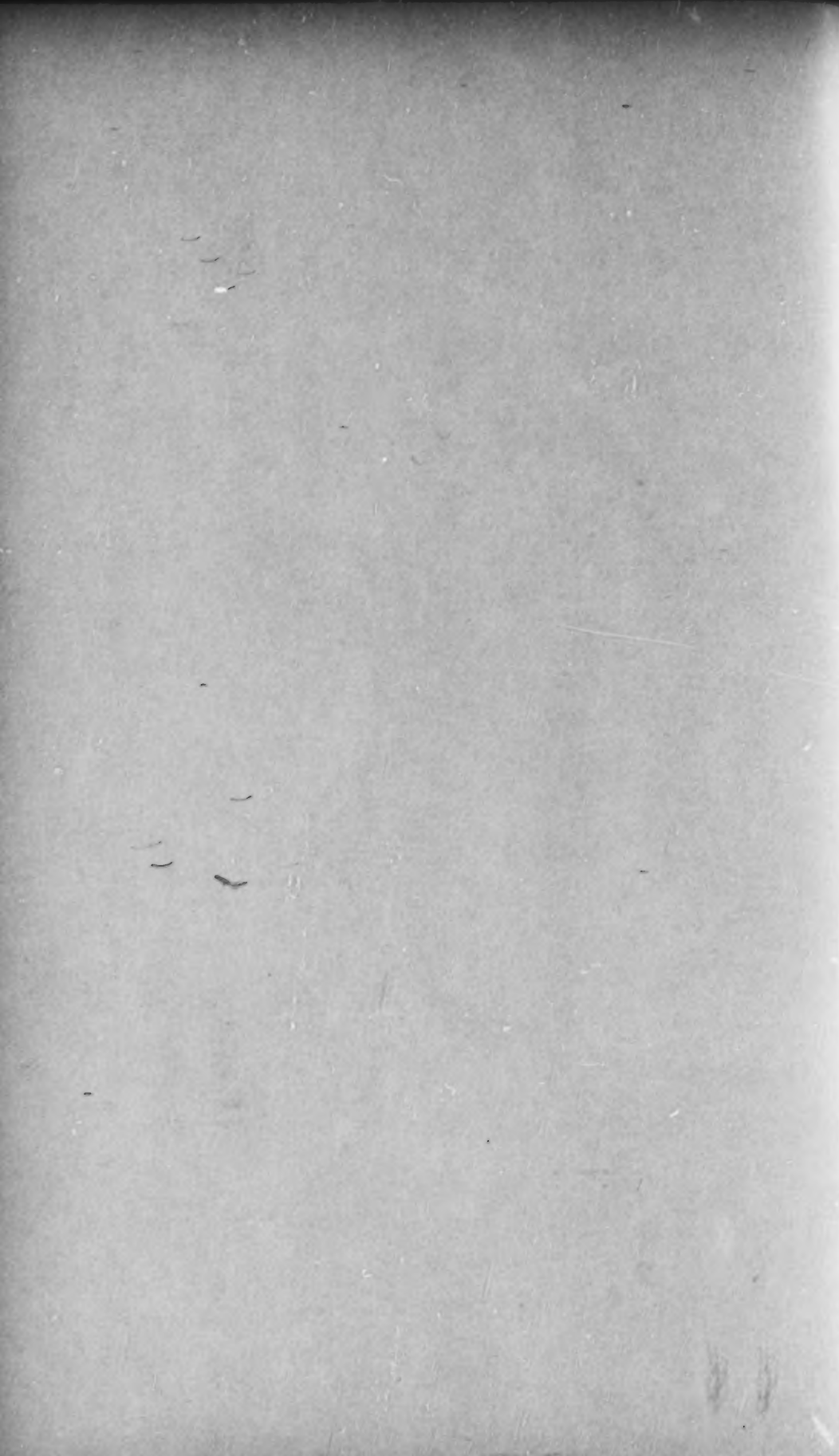
EUGENE J. MATELICH,)

Respondent.)

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT

BRIEF OF RESPONDENT IN OPPOSITION

Patricia A. Trent, Esq.
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715 South Sixth Street
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(702) 382-2560
Attorney for Respondent



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I.

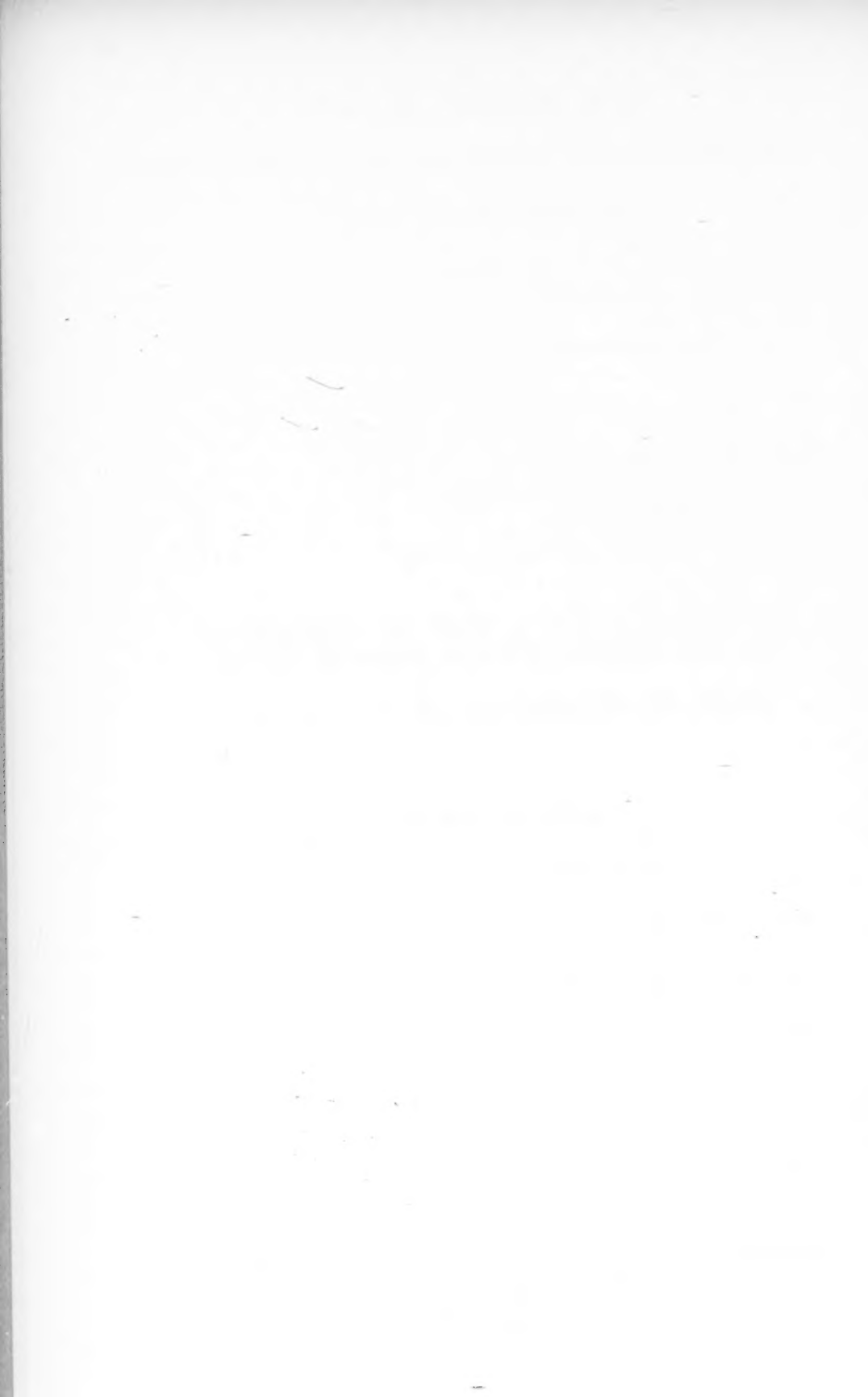
OPINION BELOW

The opinion of the Supreme Court of the State of Nevada appears in 105 Nev. Adv. Op. 42 and is included herein as Appendix "A".

II.

JURISDICTION

Petitioner has attempted to invoke the jurisdiction of this court



under Supreme Court Rule 17.1(c) alleging that the state court of last resort has decided an important question of federal law which has not been, but should be, settled by the Supreme Court of the United States.

III.

QUESTION PRESENTED

WHETHER PETITIONER'S FOURTEENTH AMENDMENT RIGHTS WERE VIOLATED BY THE STATE COURT'S RULING THAT THE DECEDENT'S STOCKS AND BONDS WERE ESTATE ASSETS

IV.

STATEMENT OF THE CASE

The facts of the case underlying this Petition for Certiorari are as follows:

MARY H. MATELICH, the mother of Petitioner and Respondent (hereinafter referred to as "Decedent"), died as the sole title owner to an extensive stock and bond portfolio, a



certain portion of which is the subject of the instant action by virtue of Petitioner's claim to ownership thereof. These stocks and bonds reflected the 1977 guaranteed signature of the Decedent, however, the remainder of the assignment section on each certificate was not completed by the Decedent prior to her death.

Petitioner, having been designated as Executrix to the Decedent's estate, ultimately claimed the entirety of the estate assets as her own based upon the fact that all of the Decedent's securities, including the subject stocks and bonds, were discovered in a safe deposit box shared by Petitioner and the Decedent. The Nevada State Supreme Court interpreted the language appearing on the bank's safe deposit box contract as being



insufficient to create a joint tenancy in the contents of the box. The Court further affirmed the findings of the lower court to the effect that there was no delivery of the subject stocks and bonds to Petitioner and no consideration was given by Petitioner for their acquisition.

The Nevada State Supreme Court reviewed the evidence adduced at the hearing before the lower court regarding the reason for the Decedent's endorsement of each stock certificate (the purpose being the Decedent's mistaken anticipation of her need for additional cash immediately after her husband's death in 1977) and the testimony from a handwriting expert, who confirmed that the Social Security numbers appearing on the assignment sections of each of the certificates



were written by the hand of Petitioner and not by the Decedent. Further, at all times during her life, the Decedent held the subject stocks and bonds within her possession and control, in addition to being the sole recipient of all dividend income therefrom.

The Supreme Court of the State of Nevada entered its Opinion on April 25, 1989, finding that the contents of the safe deposit box, including the subject stocks and bonds, were the Decedent's alone and became part of her estate at her death. On June 26, 1989, Petitioner's request for a rehearing was denied.

V.

ARGUMENT

From the time Petitioner asserted her claim to ownership over the subject stocks and bonds to the time her



Petition for Rehearing was denied by the Supreme Court of the State of Nevada, there was no mention made anywhere in the record that a federal question was at issue; indeed there is no federal question to be considered by this Honorable Court for this is a case that involves the construction of a contract relating to a safe deposit box. Furthermore, Petitioner's claim that she received the securities by way of gift was not supported by the weight of evidence heard and considered by the lower court, whose findings were upheld.

In general, the United States Supreme Court has not been anxious to interfere with a State Court's decision relating to the construction of a contract entered into and governed by that state's laws. See American Railway Express Co. v. Kentucky, 273 U.S. 269



(1927). Furthermore, the suggestion of a federal question in the present application is not sufficient because it is not apparent "from the averments of facts upon which the claim must depend that the question is one real and substantial". Consolidated Turnpike Co. v. Norfolk and Ocean View Railway Co., 228 U.S. 596 (1913).

The claim made by Petitioner that the court's action constitutes an important question of federal law which should be settled by the Supreme Court because the transfer, if not honored by state action, would constitute a taking of property in violation of the Fourteenth Amendment of the United States Constitution is an averment that comes too late. A final disposition of the case has been made and, even should this Honorable Court find that a federal



question was presented by virtue of Petitioner's appeal to the Supreme Court of the State of Nevada, the Supreme Court of the United States will not take jurisdiction "unless that question was thereupon considered and passed on adversely by the court". State of Montana v. Rice, 204 U.S. 291 (1907).

The factual findings below were supported by substantial evidence, despite the attempt on Petitioner's part to reiterate her version of the facts in an effort to reopen for a third time Petitioner's claim to ownership of the subject stocks and bonds. Should the decision entered below be modified in any respect, chaos would be the result if individuals like Petitioner could assert ownership over a decedent's solely-titled assets without substantial proof of gift or contribution. In



short, it is submitted that the decision below was fair and should not be disturbed.


VI.

CONCLUSION

For the above and foregoing reasons, Respondent respectfully asserts that certiorari should be denied.

Dated this 8th day of November, 1989.

Respectfully submitted,
SHANER & TRENT, LTD.


PATRICIA A. TRENT, ESQ.
715 South Sixth Street
Las Vegas, Nevada 89101
(702) 382-2560
Attorney for Respondent


CERTIFICATE OF MAILING

I hereby certify that on the 8th day of November, 1989, I placed a



copy of the foregoing Respondent's
Opposing Brief to the following party at
her last known address, by placing a
copy of the same in an envelope, postage
fully prepaid, first class mail,
addressed as follows, and deposited the
same in the United States mail as
follows:

LORRAINE M. MALINAK
3800 S. Decatur Blvd., Space 62
Las Vegas, Nevada 89103


An employee of Shaner &
Trent, Ltd.



APPENDIX A

IN THE SUPREME COURT OF
THE STATE OF NEVADA

No. 19102

FILED

APR 25 1989.

Clerk of Supreme Court

by /s/Jeanne C. Richards

Chief Deputy Clerk

IN THE MATTER OF THE ESTATE OF)
MARY H. MATELICH, Deceased, and)
LORRAINE MALINAK, Executrix,)
beneficiary and interested party,)
Appellant,)
vs.)
EUGENE MATELICH,)
Respondent.)

Appeal from a probate order. Eighth
Judicial District Court, Clark County;
Thomas A. Foley, Judge.



Affirmed.

Lynn R. Shoen, Las Vegas,
for Appellant,
Shaner & Trent, Las Vegas,
for Respondent.

O P I N I O N

PER CURIAM:

This opinion concerns the effect on the title of individually owned property when the owner places the property in a joint tenancy safe-deposit box and signs a signature card for the safe-deposit box declaring that all property placed in the box shall be joint tenancy property. We hold that the signature card does not create a joint tenancy in the property because the card is not a title-changing writing required by NRS 111.065(2) to create a joint tenancy. Accordingly, we affirm the district court's order.



Facts

Mary Matelich and her daughter, Lorraine Malinak, opened a joint tenancy safe-deposit box into which Matelich deposited her stocks and bonds, totaling approximately \$600,000 in value. The card that they signed to open the safe-deposit box stated, in pertinent part, as follows:

Joint Tenants (1) The undersigned do hereby declare and represent that we own, as joint tenants, with the right of survivorship, all of the property of every kind or character at any time heretofore placed in said box and that all property which may be deposited therein by either or any of us, shall be and is owned by us as joint tenants. . . .

Matelich subsequently passed away, and Malinak claimed that the stocks and bonds became joint tenancy property when Matelich placed them in the safe-deposit box. Malinak argued before the district



court that the stocks and bonds should not be distributed according to the terms of Matelich's will because they became Malinak's by right of survivorship. The district court disagreed and included the stocks and bonds in the probate estate.

Discussion

The American Law Reports notes that the majority of states hold that property placed in a safe-deposit box becomes joint tenancy property if the signature card so provides.. 14 A.L.R. 2d 948, 982. We, however, question the wisdom of this rule as did the author of the A.L.R. annotation:

[O]ne should be quick to add that this is hardly to be classed as a choice method of arranging title.

The reasoning applied in the cases denying that joint ownership can be created by agreement and deposit is entirely consonant with legal thinking. It is difficult to find in the deposit anything



closely approaching a traditional title-changing event. . . .

[W]ill intent (assuming intent plus deposit can change title), clearly expressed by the parties at the time of taking a safe-deposit box, that articles placed therein shall be jointly owned, prevail if it appears that a later deposit was meant to be temporary or that the depositor forgot the terms of the leasing agreement, or where an effect bears indicia of another kind of ownership?

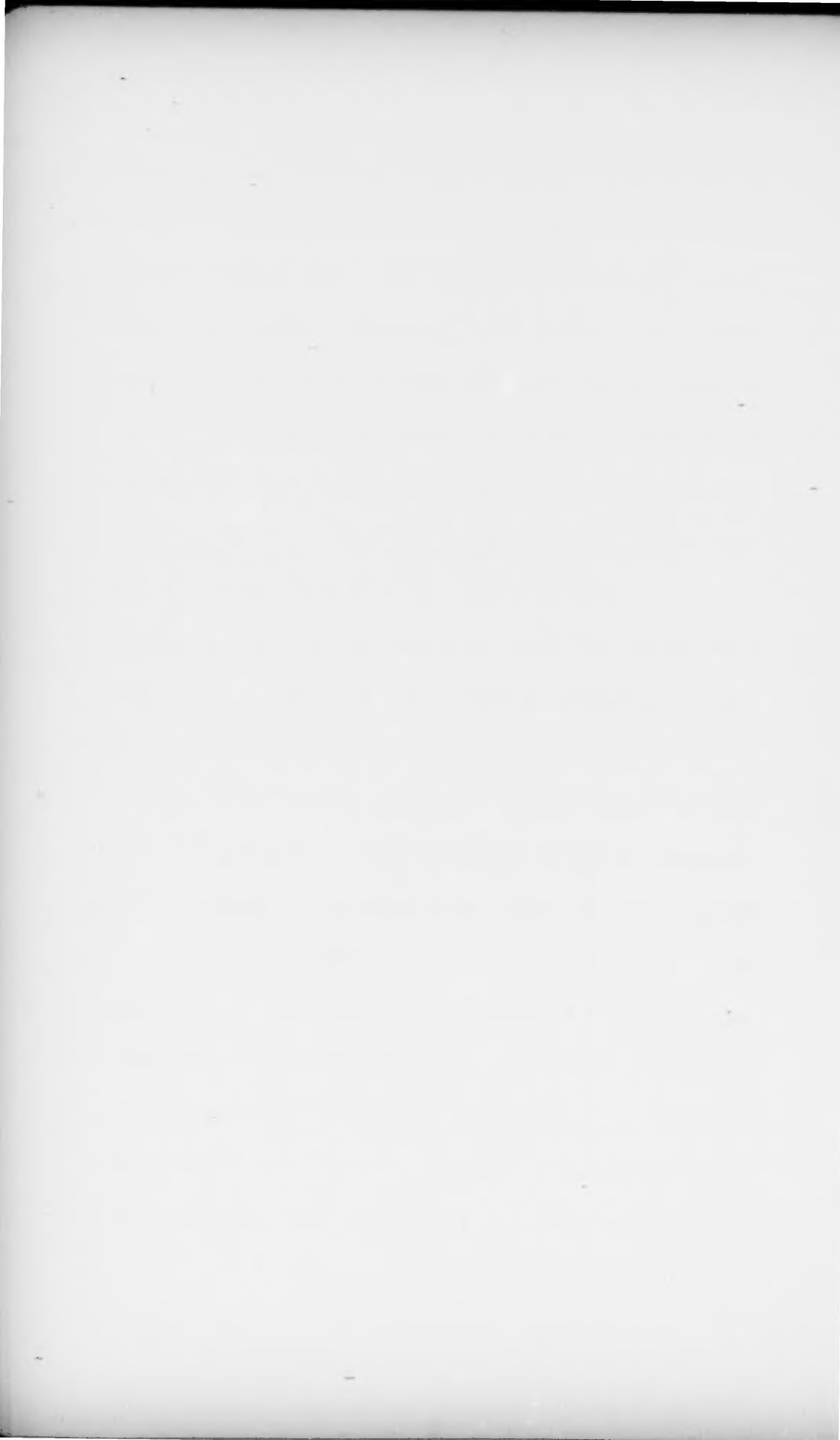
Id., at 982-83..

Pennsylvania has rejected the majority rule that the signature card creates a joint tenancy in the contents of the safe-deposit box. In re Estate of Secary, 180 A.2d 572. (Pa. 1962). The facts of Secary are very similar to the facts of this case except that the holders of the safe-deposit box were brothers. The decedent had deposited stock certificates registered solely in his name in a safe-deposit box which the

brothers rented with a provision on the signature card that the contents would be joint tenancy property. The court held that the stock certificates remained the property of the decedent's estate alone because no valid inter vivos gift of a joint interest with right of survivorship had been made. Id., at 575.

In favor of finding that the contents of the box in this case became joint tenancy property, Malinak cites to a Nevada case in which a signature card for a joint bank account created a joint tenancy with right of survivorship in the money deposited. Weinstein v. Sodaro, 91 Nev. 638, 541 P.2d 531 (1975). However, Weinstein is based on a statute governing the ownership of bank accounts. See NRS 100.085. There is no such statute for safe-deposit boxes, and we decline Malinak's invitation that we extend the

—



Weinstein holding to joint tenancy safe-deposit boxes.

The signature card that Matelich and Malinak signed was a declaration to the bank that they would deposit only joint tenancy property in the box. The bank apparently wishes to avoid the problems that might arise if one joint tenant of the safe-deposit box has access to the box while it contains the other joint tenant's individually owned property. While the declaration is an agreement between the bank and the renters of the box that the renters will put nothing but joint tenancy property in the box, the declaration is not sufficient to create a joint tenancy in the contents of the box because it is not an agreement between the renters and is not a title-changing instrument. The signature card does not, therefore, satisfy the requirement of NRS



111.065(2) that a joint tenancy be created by a writing.

The district court properly found that the stocks and bonds belonged to Matelich only and became part of her estate at her death. We have also considered Malinak's remaining assignments of error and have concluded that they are likewise without merit. Therefore, we affirm the district court's order.

/s/ Young , C.J.
Young

/s/ Steffen , J.
Steffen

/s/ Springer , J.
Springer

/s/ Mowbray , J.
Mowbray

/s/ Rose , J.
Rose